

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

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FENDI ADELE S.R.L., FENDI S.R.L. :
and FENDI NORTH AMERICA :

Civil Action No.

Plaintiffs, :

06 CIV 0243 (RMB)(MHD)

vs. :

ASHLEY REED TRADING, INC. :
SCOTT RESSLER :
and JAMES RESSLER :

Defendants. :

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**DEFENDANTS' OBJECTIONS & COMMENTS TO THE MAY 16, 2011 REPORT
& RECOMMENDATION**

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I. PRELIMINARY STATEMENT

The Defendants, Ashley Reed Trading, Inc., Scott Ressler and James Ressler (collectively “Ashley Reed”), in the above-captioned matter hereby object to the May 16, 2011 Report and Recommendation the Honorable Judge Dolinger (“May 16th R&R.”)

The Magistrate Judge re-determined issues that had not been referred to him, issues that Fendi had already argued and decided by this Court, including a denied Request for Reconsideration.

II. ARGUMENT

Liability and Damages in this Case Have Already Been Decided, and Additional Damages Were Not Currently Before the Magistrate Judge

The May 16th R&R recommends additional remedies and an increased damage award, issues which have already been resolved and are not the subject of this current referral. See *28 U.S.C. § 636 (b)(1)*. As stated quite clearly in this Court’s October 19, 2010 Decision and Order (Docket Entry No. 150, hereinafter the “*October 19th Order*”), “the only remaining issue is a determination of costs and attorney’s fees” and this matter was referred solely “for a hearing and recommendation as to Plaintiff’s request for costs and attorney’s fees to date.” *October 19th Order*, p. 7-8.

Fendi had already asked this Court to reconsider its ruling with regard to additional remedies and damages (See Docket Entry No. 152), and that request was denied by this court by the order dated November 18, 2010 (See Docket Entry No. 156). Fendi’s remaining option to contest such a finding is an appeal.

Fendi is now seeking a third bite out of this apple, and asking this Court to decide matters beyond the referral, and to reargue their already denied Request for Reconsideration.

A second attempt at Reconsideration is not the purpose of the current referral, and

further, any such request is not in compliance with or appropriate pursuant to Local Civil Rule 6.3; this attempt is well beyond the 14-day time-limit, and has not disclosed any facts or law that were overlooked by this Court in the *October 19th Order*, or the subsequent decision denying Fendi's initial Request for Reconsideration. See *S.D.N.Y. Local Civil R 6.3*; 28 U.S.C. § 636 (b)(1).

The May 16th R&R also recommends additional pre-judgment interest based on the additional proposed damages. However, once again, pre-judgment interest has already been decided in the *October 19th Order*, and is not an issue currently before the Magistrate. *Id.* at 6; 28 U.S.C. § 636 (b)(1).

Fendi argued and the May 16th R&R adopt the position that since the parties and this Court "agree that [the District Court] clearly expects this Court to recommend a Judgment that, if adopted, will conclude the proceedings before the district court," these issues must now be re-opened. The *October 19th Order* concluded this case insofar as liability and damages were concerned, and left only attorney's fees and costs as the remaining issues. A determination of attorney's fees and cost *will* "conclude the proceedings before the district court."

Fendi has been granted substantial remedies, including a permanent injunction and over \$10 million in damages, and this Court has clearly made the decision that such remedies adequately address the infringement that was found by this Court. Fendi may not be satisfied with the result that this Court reached, but they have already had their opportunity to contest that result, and that request was denied.

Fendi should not be granted what is now a third chance to re-argue issues that have already been decided by this Court.

III. CONCLUSION

The liability and damages in this case have been decided already, and the May 16th R&R's recommendation for additional damages and pre-judgment interest was not within the scope of the referral. Accordingly, any such awards are irrelevant to the matter for which this case was referred, and any recommendation for an award of additional damages should not be adopted at this time.

New York, New York
Dated: May 26, 2011

Respectfully Submitted,

/s/ Gerard F. Dunne
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